

Statement of Reasons for Authorization to Publish Amendments to Sales and Use Tax Regulation 1702, “Successor’s Liability”

A. Introduction

Regulation 1702 interprets and explains the Sales and Use Tax Law as it applies to the liability of the successor of a business for taxes imposed on the business when it was owned by the prior owner. The purpose of the proposed amendment is to clarify the regulation and make it consistent with current statute.

B. Background

Senate Bill No. 151 (Stats. 1989, Ch. 768) amended Revenue and Taxation Code section 6814 to add “, not later ... of goods” after “determination” in second sentence of subdivision (a), which is reflected in subdivision (d) of the regulation. In addition, subdivision (b) was added to section 6814. Subdivision (b) reads as follows:

“(b)(1) If the board finds that a successor’s failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor’s control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.”

“(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.”

Subdivision (b) of section 6814 is the source of the primary amendment to the regulation.

C. Proposed Amendments

Subdivision (c). Add “of the Revenue and Taxation Code,” to the end of the last unnumbered paragraph. This amendment clarifies the reference to the Revenue And Taxation Code.

Subdivision (d)(2). Add “originally imposed upon the predecessor” after penalty in the first sentence and end first sentence after “issued” and delete remaining language in first sentence. This amendment would allow for the relief of all penalties reflected on a successor billing where there is no relationship between the successor and predecessor. Staff would consider that a relationship exists between the successor and predecessor if there is common ownership or if the successor was a responsible person as defined in Regulation 1702.5 (b)(1) in the predecessor entity. The language to be deleted is considered to be redundant as it is already specified in other parts of this regulation.

Subdivision (f). Add “subdivision” before “(c)” in last sentence. This amendment clarifies the reference to a subdivision.

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(a) When Duty to Withhold Purchase Price Arises. The requirement that a successor or purchaser of a business or stock of goods withhold sufficient of the purchase price to cover the tax liability of the seller, arises only in the case of the purchase and sale of a business or stock of goods under a contract, providing for the payment to the seller or person designated by him of a purchase price in money or property or providing for the assumption of liabilities and only to the extent thereof, and does not arise in connection with other transfers of a business such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy.

(b) Amounts to Which Liability Extends. The liability of the successor or purchaser of a business or stock of goods extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against him or her, which include taxes, interest thereon to the date of payment of the taxes, and penalties including penalties for nonpayment of taxes. Liability also extends to penalties determined and unpaid at the time of sale for negligence or intentional disregard of the Sales and Use Tax Law or authorized rules and regulations, and fraud or intent to evade the Sales and Use Tax Law or authorized rules and regulations.

(c) Release from Obligation. The purchaser of the business or stock of goods will be released from further obligation to withhold the purchase price if he obtains a certificate from the board stating that no taxes, interest, or penalties are due from a predecessor. He will also be released if he makes a written request to the board for a certificate and if the board does not issue the certificate or mail to the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the certificate within 60 days after the latest of the following dates:

- (1) The date the board receives a written request from the purchaser for a certificate.
- (2) The date of the sale of the business or stock of goods.
- (3) The date the former owner's records are made available for audit.

The certificate may be issued after the payment of all amounts due under the Sales and Use Tax Law, according to the records of the board as of the date of the certificate, or after the payment of the amounts, including amounts not yet ascertained, is secured to the satisfaction of the board. Such security is not subject to the limitations contained in Section 6701 of the Revenue and Taxation Code.

(d) Enforcement Of Obligation.

- (1) The liability is enforced by service of a notice of successor liability not later than three years after the date the board receives written notice of the purchase of the business or stock of goods.

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The successor may petition the Board for reconsideration of the liability within 30 days after service. The liability becomes final, and the amount due and payable, in the same manner as determinations and redeterminations of other sales and use tax liability.

(2) On or after January 1, 1990, a successor may be relieved of any penalty originally imposed upon the predecessor included in the notice of successor liability regardless of when the notice was issued where there is no relationship between the successor and predecessor. A relationship exists between the successor and predecessor if there is common ownership or if the successor was a responsible person as defined in Sales and Use Tax Regulation 1702.5 (b)(1) in the predecessor entity, if it is determined by the board that failure by the successor to withhold a sufficient amount of the purchase price to cover the liability of the former owner was due to reasonable causes and circumstances beyond the control of the successor and occurred even though the successor exercised ordinary care and was not willfully negligent. A successor seeking relief of a penalty must file a written statement with the board under penalty of perjury stating the facts upon which he or she bases the claim for relief.

(e) **Separate Business Locations.** Where one person operates several business establishments, each at a separate location, each establishment is a separate "business" and has a separate "stock of goods" for purposes of determining the liability of a successor. A purchaser of the business or stock of goods of any such establishment is subject to liability as a successor with respect to that establishment even if he does not purchase the business or stock of goods of all the establishments.

(f) **Purchase Of A Portion Of A Business.** A person who purchases a portion of a business or stock of goods may become liable as a successor as, for example, where he purchases substantially all of the business or stock of goods or where the business or stock of goods is purchased by two or more persons. In cases of doubt as to possible liability, the purchaser should obtain a certificate as provided in subdivision (c) above.

Note: Authority: Section 7051, Revenue and Taxation Code.

Reference: Sections 6701, 6811, 6812, 6813, and 6814, Revenue and Taxation Code.